

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

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|------------------------------|---|-----------------------|
| BRIAN W. PATTERSON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. CIV-15-243-D |
| |) | |
| OKLAHOMA DEPARTMENT OF, |) | |
| CORRECTIONS, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

ORDER

This matter comes before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Suzanne Mitchell pursuant to 28 U.S.C. § 636(b)(1). Judge Mitchell construes Plaintiff's initial petition as a motion for a temporary restraining order, and recommends that the action be dismissed without prejudice.

Plaintiff, who appears *pro se* and *in forma pauperis*, has neither filed a timely objection to the Report nor requested additional time to object, although he was expressly advised of the right to object, the deadline for an objection, and the consequences of failing to object. Although the Clerk's mailing to Plaintiff was returned as undeliverable, the Court finds this fact provides no basis for an exception to the court of appeals' "firm waiver rule" because Plaintiff is responsible for giving notice of a change of address.¹ *See Theede v.*

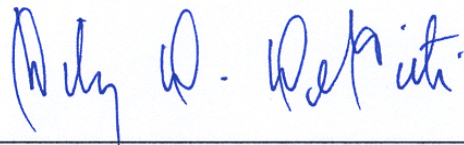
¹ The Clerk was directed to mail a copy of the Report to Plaintiff at the Lexington Assessment and Reception Center because publicly available information showed he had been transferred after the action was filed. Plaintiff was subsequently transferred to the James Crabtree Correctional Center. *See* http://docapp065p.doc.state.ok.us/servlet/page?_pageid=394&_dad=portal30&_schema=PORTAL30&_doc_num=265446&_offender_book_id=155795 (last visited April 24, 2015).

United States Dep't of Labor, 172 F.3d 1262, 1267-68 (10th Cir. 1999) (*pro se* plaintiff who failed to provide notice of a change of address waived right to review by failing to make a timely objection). Therefore, the Court finds that Plaintiff has waived further review of the issues addressed in the Report. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *see also United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996).

In addition, upon consideration of the issues, the Court agrees with Judge Mitchell's analysis. Therefore, the Court concurs in Judge Mitchell's recommendation for dismissal of the action without prejudice.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 6] is adopted in its entirety. This action is dismissed without prejudice to refiling. A separate judgment of dismissal shall be entered.

IT IS SO ORDERED this 27th day of April, 2015.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE